



173074
RIVERFRONT PLAZA, EAST TOWER
951 EAST BYRD STREET
RICHMOND, VIRGINIA 23219-4074

TEL 804 • 788 • 8200
FAX 804 • 788 • 8218

DAVID O. LEDBETTER
DIRECT DIAL: 804-788-8364
EMAIL: dledbetter@hunton.com

FILE NO: 23390.000364

February 13, 2003

By Facsimile and First Class Mail

Mr. William E. Munro, (S-6J)
Director
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Dear Mr. Munro:

On behalf of our client, Ethyl Corporation and its predecessor Edwin Cooper Inc. (hereinafter, "Ethyl"), this letter is sent in response to your letter dated October 3, 2002, concerning the Sauget Area 2 Site -- Groundwater Operable Unit. At a meeting conducted by Messrs. Ribordy and Martin on November 6, 2002, at the EPA's offices in Chicago, Mr. Martin advised Ethyl and other Respondents present that the deadline for submission of this response would be Friday, November 15, 2002. To afford Ethyl an opportunity, in cooperation with other parties, to attempt to negotiate a funding agreement with Solutia and Monsanto, you have kindly granted two further extensions of the deadline -- to and including February 14, 2003. This letter is not intended to constitute an admission of liability or of any issue of fact or law adverse to Ethyl's interests.

At the outset, Ethyl notes that, without admission of liability, it has cooperated and will continue to cooperate with several other potentially responsible parties ("PRPs") in the conduct and completion of the RI/FS for Sauget Area 2 -- work conducted pursuant to and order on consent and subject to EPA oversight. Ethyl wants to assure the EPA that it intends to continue its policy of cooperating with EPA and State officials in addressing Sauget Area 2, subject only to assuring that it bears only its equitable fair share of potential responsibility among like-minded PRPs.

Ethyl believes that it is not responsible for the conditions which EPA has cited as giving rise to the Unilateral Administrative Order attached to your letter and issued to Ethyl and numerous other Respondents (the "Order"). It is apparent from the documents and studies in the record

Mr. William E. Muno, (S-6J)
February 13, 2003
Page 2

that, of the facility sources of releases and threatened releases of hazardous substances cited by the EPA as giving rise to an endangerment to human health or the environment and that EPA has concluded require the ordered interim remedial action, only releases and threatened releases from Site R and the Krummrich Plant are in fact confirmed sources of the subject contamination. No other source facility has been established to exist, much less quantified. At most, the EPA has raised unresolved questions as to the possibility of other, minor, contributing sources of the subject groundwater contamination; but any conclusion concerning any contribution from those sources is not reasonably supported by available evidence and is not sufficient as a basis for the assignment of liability to Ethyl. Ethyl is not aware of any historical information, testimony, or data and related analysis indicating that it has arranged for the disposal of any hazardous substance at either Site R or the Krummrich Plant. Thus, Ethyl has good and sufficient cause to believe that the EPA could not sustain its burden of proof concerning Ethyl's asserted liability in connection with the Order and to believe that it is not an appropriate subject of the Order.

Direct compliance by Ethyl with all provisions of the Order requiring or related to defined "Work" is infeasible -- in fact, impossible -- because, as was expected by EPA when the Order was issued, and as confirmed by counsel for Solutia and Monsanto, Ms. Linda Tape, at a meeting with EPA and other Respondents on November 6, 2002, Solutia already has undertaken to begin performance of the Work in cooperation with, and subject to the oversight of the EPA, and has notified the EPA that it will comply with the Order. As acknowledged by the EPA at the meeting on November 6, 2002, simultaneous implementation of the Work-related elements of the Order by both Solutia and one or more other Respondents acting independent of Solutia is infeasible and not sought by the EPA. Ethyl is informed and believes that Solutia has confirmed to EPA its intention to comply with the Order and has satisfied related financial assurance requirements of the Order.

Thus, while reserving all defenses, the only feasible avenue of participation in the ordered response activities available to Ethyl has been to try to negotiate a funding agreement with Solutia or with the EPA. Because EPA has, until now, encouraged Ethyl to negotiate with Solutia, Ethyl has done so, in good faith. These efforts have included exchanges of correspondence and telephone conferences, and they have included repeated expressions of interest in face-to-face negotiations. Ethyl has cooperated in organizing and has participated in two detailed, multi-party proposals of final settlement with Solutia concerning all costs of compliance with the Order. They included offers to pay to Solutia substantial sums. Those proposals of settlement also included terms responsive to some of Solutia's settlement demands and reflected material changes in settlement terms as the negotiations proceeded. Solutia, however, has rejected those proposals and also has recently clarified that it is unwilling even to consider a final settlement concerning costs associated with the subject Order. Solutia has not

Mr. William E. Muno, (S-6J)
February 13, 2003
Page 3

presented a settlement proposal following its receipt of the most recent settlement proposal in which Ethyl has participated. It simply rejected that proposal. Although it is not required for Ethyl to establish "sufficient cause" within the meaning of CERCLA Section 106(b)(1), even if, purely for the sake of negotiation, all factual and legal findings and conclusions contained in the Order and reflected in the accompanying Record of Decision are assumed to be correct, Solutia's settlement proposals to Ethyl and other Respondents cannot be reasonably construed to constitute an equitable balancing of the potential liabilities involved.

Ethyl is prepared, either alone or with other Respondents who have joined Ethyl in the most recent offer to Solutia, to immediately enter into negotiations with EPA in an effort to resolve EPA's demand that Ethyl participate in the funding the activities required by the Order; and Ethyl requests a meeting with the EPA to discuss how, and under the circumstances, it may participate in funding the requirements of the Order. Ethyl is willing to provide to EPA documentation of its good faith efforts to reach an agreement with Solutia.

Ethyl also declines to confirm its intention to comply with the Order because, by its terms (paragraph XXV.99.), the Order allows Ethyl only two options: (1) unequivocally agreeing to comply with all terms of the Order or (2) declining or failing to unequivocally accept and comply with all terms of the Order. However, several terms and conditions of the Order are outside the scope of the authority for issuance of the Order, CERCLA Section 106(a). Therefore, Ethyl, in good faith, and with sufficient cause, believes that, as a matter of law, it is not, and cannot be, required to comply with each and every term of the Order. Reserving all rights to supplement this letter, including rights to supplement this objection, Ethyl notes, without limitation, the following terms of the Order that are beyond the scope of authority afforded by Section 106(a) or that are otherwise legally objectionable.

1. Paragraph II.2.: EPA is without authority to determine, as a matter of law, or to require that: "[e]ach Respondent is jointly and severally responsible for carrying out all activities required by this Order" or that "[f]ailure of one or more Respondents to comply with all or any part of this Order shall not in any way excuse or justify noncompliance by any other Respondents."
2. Paragraph II.2.: EPA is without authority to determine, as a matter of law, or to require that: "[n]o change in the ownership, corporate status, or other control of any Respondent shall alter any of the Respondent's responsibilities under this Order."
3. Paragraph VII.A.48.: EPA is without authority to require the achievement of performance standards that may be impossible to achieve.

Mr. William E. Muno, (S-6J)

February 13, 2003

Page 4

4. Paragraph VII.A.51.: EPA is without authority to require Order Respondents to communicate information to the public which they, in good faith, do not agree with or believe to be untrue. The provision in question allows no exceptions for such circumstances.
5. Paragraph VII.A.53.: EPA is without authority to require agreement to perform additional or future work not presently known to present any requisite threat to public health or welfare or the environment as a condition to performance of Work specified in the Order. Imposition of such a requirement also constitutes a denial of constitutional due process rights.
6. Paragraph XVIII.79.: EPA is without authority to impose, as a condition of compliance with the Order, the certification required by this provision. Imposition of this requirement unreasonably, arbitrarily and capriciously, prevents compliance with the Order by any party which cannot truthfully submit the required certification. The required certification is unconstitutionally vague -- particularly with regard to whether it may apply to documents which may have been unintentionally lost or destroyed during the period in question. EPA also is without authority to require disclosure of privileged documents or disclosure of the information required concerning privileged documents.
7. Paragraph XX.86.: EPA is without authority to require, or to require as a condition of compliance with the Order, that, without any limitations, Order Respondents must reimburse all response costs incurred by the United States in overseeing implementation of the other requirements of the Order. For example, and without limitation: (1) EPA is without authority to require payment of money, including reimbursement of response costs, to the EPA pursuant to Section 106(a) or otherwise; and (2) EPA is without authority to require that its costs be reimbursed even if its claim or demand for reimbursement is not made within the period of limitation of claims and liability for such costs otherwise set forth in CERCLA. Nor is EPA authorized, pursuant to Section 106(a), to unilaterally constrict the limits of its burdens to document or otherwise prove costs in order to recover those costs.
8. Paragraph XIX.84.: EPA is without authority to determine or require prior agreement that any delay in performance "not properly justified" shall be considered a violation of this Order. This term of the Order also is unconstitutionally vague.

HUNTON & WILLIAMS

Mr. William E. Muno, (S-6J)

February 13, 2003

Page 5

Finally, to the extent reasonably possible, without any admission of liability, Ethyl has complied with and remains willing to comply with the Order through its ongoing and active participation in good faith negotiations with Solutia and other Respondents or with the EPA toward the goal of paying resolving demands that it pay some share of the costs of compliance with the Order. If those negotiations continue in good faith and diligence to an agreement between Solutia and Ethyl, Ethyl will remain in compliance with the Order. If they do not because Solutia is unwilling to reach a reasonably equitable settlement with Ethyl, then Ethyl will remain in compliance with the Order, because no avenue of compliance other than negotiation with Solutia or EPA is feasible at this time, and the emergence of no other course is reasonably anticipated. No other course of potential compliance was suggested by EPA, when compliance options were solicited by counsel for Ethyl at the November 6 meeting. If EPA wishes to oversee Ethyl's good faith compliance through its negotiations with Solutia, whether by direct monitoring of those negotiations or through receipt of periodic reports or through other means, or if EPA wishes to discuss Ethyl's participation in funding of activities required by the Order through a settlement payment to EPA, please so advise us.

Thank you for your consideration of our past requests for extensions of time within which to submit this letter, and thank you for your consideration of this letter.

Respectfully submitted,



David O. Ledbetter
Counsel for Ethyl

cc: Thomas Martin, Esq. (via facsimile and overnight mail)✓